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## UNITED STATES DISTRICT COURT

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## SOUTHERN DISTRICT OF CALIFORNIA

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11 DONALD J. TORMEY, on behalf of ) Civil No. 07CV1587 LAB(RBB)  
himself and all others )  
12 similarly situated, and on ) NOTICE AND ORDER FOR EARLY  
behalf of the general public, ) NEUTRAL EVALUATION CONFERENCE  
13 )  
Plaintiff, )  
14 )  
v. )  
15 )  
THE VONS COMPANIES, INC., a )  
16 Michigan corporation; SAFEWAY )  
INC., a Delaware corporation, )  
17 and DOES 1 through 100, )  
inclusive, )  
18 )  
Defendants. )  
19 \_\_\_\_\_)

20

21 IT IS HEREBY ORDERED that an early neutral evaluation of your  
22 case will be held on September 5, 2007, at 8:30 a.m. in the  
23 chambers of United States Magistrate Judge Ruben B. Brooks, United  
24 States Courthouse, 940 Front Street, Room 1185, San Diego,  
25 California.

26 Pursuant to Rule 16.1(c) of the Local Rules of the United  
27 States District Court for the Southern District of California, all  
28 parties, claims adjusters for insured Defendants and non-lawyer

1 representatives with full and unlimited authority<sup>1</sup> to enter into a  
2 binding settlement, as well as the principal attorneys responsible  
3 for the litigation, must be present and legally and factually  
4 prepared to discuss and resolve the case. Corporate counsel shall  
5 not appear on behalf of a corporation as the party representative  
6 who has the authority to negotiate and enter into a settlement.  
7 Failure to attend or obtain a proper excusal will be considered  
8 grounds for sanctions. (Where the suit involves the United States  
9 or one of its agencies, only counsel for the United States with  
10 full settlement authority need appear.) (If Plaintiff is  
11 incarcerated in a penal institution or other facility, the  
12 Plaintiff's presence is not required and Plaintiff may participate  
13 by telephone. In that case, defense counsel is to coordinate the  
14 Plaintiff's appearance by telephone.)

15 Plaintiff's(s') counsel shall give notice of the early neutral  
16 evaluation conference to all defendants filing an answer after the  
17 date of this notice.

18 All conference discussions will be informal, off the record,  
19 privileged and confidential. Absent good cause shown, if any  
20 party, counsel or representative fails to promptly appear at the  
21 settlement conference, fails to comply with the terms of this

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22       <sup>1</sup> "Full authority to settle" means that the individuals at  
23 the settlement conference be authorized to fully explore settlement  
24 options and to agree at that time to any settlement terms  
25 acceptable to the parties. Heileman Brewing Co., Inc. v. Joseph  
26 Oat Corp., 871 F.2d 648 (7th Cir. 1989). The person needs to have  
27 "unfettered discretion and authority" to change the settlement  
28 position of a party. Pitman v. Brinker Int'l, Inc., 216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement authority to attend the conference includes that the person's view of the case may be altered during the face-to-face conference. Pitman at 486. A limited or a sum certain of authority is not adequate. Nick v. Morgan's Foods, Inc., 270 F.3d 590 (8th Cir. 2001).

1 Order, including the failure to timely provide the settlement  
2 conference memoranda WHEN REQUESTED, is substantially unprepared to  
3 meaningfully participate in the settlement conference, or fails to  
4 participate in good faith in the settlement conference, the  
5 settlement conference may be vacated and sanctions may be imposed  
6 pursuant to Rules 16(f) and 37(b)(2)(B), (C), and (D), Federal  
7 Rules of Civil Procedure.

8 In the event the case does not settle at the early neutral  
9 evaluation conference, the parties shall also be prepared to  
10 discuss the following matters at the conclusion of the conference:

- 11 1. Any anticipated objections under Federal Rules of Civil  
12 Procedure 26(a)(1)(E) to the initial disclosure provisions of  
13 Federal Rule of Civil Procedure 26(a)(1)(A-D);  
14 2. The scheduling of the Federal Rule of Civil Procedure 26  
15 (f) conference;  
16 3. The date of initial disclosure and the date for lodging  
17 the discovery plan following the Rule 26(f) conference; and  
18 4. The scheduling of a case management conference pursuant to  
19 Federal Rule of Civil Procedure 16(b).

20 The Court will issue an order following the early neutral  
21 evaluation conference addressing these issues and setting dates as  
22 appropriate.

23 Questions regarding this case may be directed to the  
24 magistrate judge's research attorney at (619) 557-3404.

25  
26 Dated: August 15, 2007

  
27 RUBEN B. BROOKS  
United States Magistrate Judge  
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1 cc: All Parties of Record  
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27 A Notice of Right to Consent to Trial Before a United States  
Magistrate Judge is attached for your information.  
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1                   **NOTICE OF RIGHT TO CONSENT TO TRIAL BY UNITED STATES**  
2                   **MAGISTRATE JUDGE**

3                 In accordance with the provisions of 28 U.S.C. § 636(c), you  
4                 are hereby notified that a United States Magistrate Judge of this  
5                 district may, upon the consent of all parties, conduct any or all  
6                 proceedings, including a jury or non-jury trial, and order the  
7                 entry of a final judgment. Consent forms are available in the  
8                 Clerk's office. Counsel for the Plaintiff shall be responsible for  
9                 obtaining the consent of all parties, should they desire to  
10                consent.

11                You should be aware that your decision to consent or not to  
12                consent is entirely voluntary and should be communicated solely to  
13                the Clerk of the Court. Only if all parties consent will the  
14                district judge or magistrate judge to whom the case has been  
15                assigned be informed of your decision.

16                Judgments of the United States Magistrate Judges are  
17                appealable to the United States Court of Appeals in accordance with  
18                this statute and the Federal Rules of Appellate Procedure unless  
19                the parties at the time of their consent to trial before a  
20                magistrate judge agree upon review by the United States District  
21                Court.

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